

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Didier TRONO et al.

Serial No.: 10/010,081

Filed: November 9, 2001

For: METHODS AND COMPOSITIONS
RELATING TO IMPROVED
LENTIVIRAL VECTORS AND THEIR
APPLICATIONS

Patent No.: 7,575,924

Issued: August 18, 2009

Atty. Dkt. No.: CLFR:010US

Confirmation No.: 2667

CERTIFICATE OF ELECTRONIC TRANSMISSION
37 C.F.R. § 1.8

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May 18, 2010

Date

David L. Parker

REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT IN VIEW OF WYETH

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Patentees request reconsideration of Patent Term Adjustment (PTA) under 37 C.F.R. §1.705(d). The Decision on Request for Recalculation of Patent Term Adjustment in View of Wyeth and Notice of Intent to Issue Certificate of Correction dated April 20, 2010 indicates a PTA of 1112 days. Applicants believe this to be an error and request the PTA to be changed to 2078 days.

REMARKS

The patent term adjustment under 35 U.S.C. §154(b) for the above-identified patent is listed as 1112 days. The determination of 1112 days is in error in that pursuant to 35 U.S.C. §154(b) the Office failed to issue a patent within three years of the actual filing date of the above-referenced application in accordance with 37 CFR §1.702(b), failed to take certain action within the time frame specified in 37 CFR §1.702(a), and accrued delay due do successful appellate review pursuant to 37 CFR §1.702(c).

Pursuant to 37 CFR §1.703(b), Patentees are entitled to a period of patent term adjustment due to failure of the Office to issue a patent within three years after the date the corresponding application was filed under 35 U.S.C. §111(a), *i.e.*, November 9, 2004 (hereinafter "Three Year Delay"). Since the Office failed to issue the above-identified patent within 3 years, Patentees are entitled to a period of patent term adjustment beginning on the day after the date that is 3 years after the filing date of the application, *i.e.*, November 10, 2004, and ending on the date that the patent issued, *i.e.*, August 18, 2009. Accordingly, the period of patent term adjustment due to the Three Year Delay by the Office is 1,743 days. This period of adjustment is erroneously listed as 688 days on the Patent Term Adjustment Sheet available on PAIR.

Patentees agree with the Office's determination of patent term adjustment due to examination delay available under §1.702(a) as 503 days (414 days for failure to mail an action not later than 14 months after the actual filing date and 89 days for failure to mail an action not later than four months after Applicants submitted a response to a previous action).

As set forth in 37 CFR §1.703(f), Patentees are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR §1.702 (hereinafter "Office Delay") reduced by the period of time equal to the period of time during which Patentees failed to

engage in reasonable efforts to conclude prosecution pursuant to 37 CFR §1.704 (hereinafter "Applicant Delay"). With respect to the above-referenced application, the total period of Office Delay is the sum of the period of Three Year Delay (1743 days) and the period of Examination Delay (503 days), *to the extent these periods of delay are not overlapping*. As the period of 14 Month Delay ended on February 27, 2004, prior to the first day of the period of Three Year Delay, *i.e.*, November 10, 2004, Patentees submit that these periods are not overlapping. Patentees note, however, that the 89 day period of delay (July 22, 2006 to October 19, 2006) overlaps with portions of the Three Year Delay period (November 10, 2004 to August 18, 2009). Accordingly, Patentees submit that the total period of Office Delay is 2,157 days, which is the sum of the period of Three Year Delay (1,743 days) and the period of Examination Delay (503 days), reduced by the period of overlap (89 days).

To calculate the period of patent term adjustment, the total period of Office Delay is reduced by the period of Applicant Delay, which the Office correctly calculated as a period of 79 days. Accordingly, Patentees submit that the correct patent term adjustment for the above-referenced application is 2,078 days, which is the difference between the total period of Office Delay (2,157 days) and the period of Applicant Delay (79 days).

In view of the foregoing, it is respectfully requested that this Request for Reconsideration of Patent Term Adjustment be favorably considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a patent term adjustment of 2,078 days.

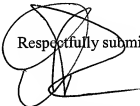
CONCLUSION

In consideration of the events described above, Patentees believe the PTA calculation of 1,112 days is incorrect. As such, Patentees respectfully request reconsideration of the PTA in the following manner:

- 1) Total Office delay should be calculated as 2,157 days;
- 2) Total Applicant delay should be calculated as 79 days; and
- 3) Total PTA should be calculated as 2,078 days.

As required by 37 C.F.R. § 1.705, Patentees note this patent is subject to a terminal disclaimer to U.S. Patent No. 7,198,950, which has a terminal disclaimer to U.S. Patent No. 7,629,153.

The required fee in the amount of \$200.00 in connection with the filing of this paper is being charged to a credit card through EFS-Web concurrently with this submission. The Commissioner is hereby authorized to deduct any underpayment of fees or any additional fees required under 37 C.F.R. §§ 1.16 to 1.21 in connection with the filing of this paper from Fulbright & Jaworski Deposit Account No.: 50-1212/CLFR:010US.


Respectfully submitted,

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Date: May 18, 2010